

Practitioner's Docket No. 944-003,059**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**in re application of: **Mate et al.**Application No.: **09 / 788,275**Group No.: **2667**Filed: **February 16, 2001**Examiner: **Anh Vu H Ly**For: **METHOD AND DEVICE FOR DOWNLINK PACKET SWITCHING**RECEIVED
SERIALS SECTION
APR 08 2005

Batch No:

**Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450****PETITION TO REVIVE PATENT APPLICATION—FAILURE TO PAY ISSUE
FEE UNINTENTIONAL (37 C.F.R. §§ 1.137(b) AND 1.316)**

1. Applicant petitions for revival of this application.
2. Nature of the Abandonment

- ☐ In the communication from the PTO mailed N/A, it was noted that this application is abandoned for:
- ☒ failure to pay the issue fee within the 3 month period from the date of the notice of allowance required by 37 C.F.R. § 1.316.
- ☐ failure to pay the balance of the issue fee within 3 months from the date of notification of the deficiency as required by 37 C.F.R. § 1.317.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*
(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

- ☒ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10 *

- ☒ with sufficient postage as first class mail.

☐ as "Express Mail Post Office to Addressee"

Mailing Label No. _____ (mandatory)

TRANSMISSION

- ☐ facsimile transmitted to the Patent and Trademark Office, (703) _____

Signature

Cathy Sturmer

(type or print name of person certifying)

Date: 11-19-04

* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

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- ☒ the undersigned has reviewed his/her records and noted that the issue fee for this application was not timely paid.

3. Date of Filing of This Petition After Abandonment

(check all item which apply)

This petition is being filed:

- ☐ within 3 months after the applicant was first notified of abandonment
☒ within 1 year of the date of abandonment

NOTE: Under very limited conditions, a petition to revive for unintentional failure to pay the issue fee may exceed the one year limit when abandonment is due to action or inaction by the applicant and the PTO performs a positive documented Official act which could lead a reasonable individual to conclude that the action or inaction was appropriate. Notice of Aug. 28, 1985 (1059 O.G. 4).

4. The delay in payment of the issue fee was unintentional. The entire delay from the due date in paying the required issue fees until the filing of this petition was unintentional. 37 C.F.R. § 1.137(b)(3).

5. Payment of the issue fee (37 C.F.R. § 1.137(b)(1)):

NOTE: 37 U.S.C. 41(a)(7) authorizes that acceptance of an "unintentionally delayed payment of the fee for issuing each patent." Thus, the statute requires the payment of the issue fee as a condition of reviving an application abandoned or patent lapsed for failure to pay the issue fee. Filing a continuing application without payment of the issue fee or any outstanding balance thereof is not an acceptable reply. A 37 C.F.R. 1.137(b)(1) petition for unintentional revival indicates that in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply include the payment of the issue fee or any outstanding balance. 37 C.F.R. § 1.37(c). See also M.P.E.P., § 711.03(c), 8th Edition, Revision 1.

NOTE: The petition must contain or refer to payment of the issue fee then in effect, if no portion of the issue fee was previously submitted, or any outstanding balance of the issue fee then in effect, if a portion of the issue fee was previously submitted. M.P.E.P., § 711.03(c), 7th Edition.

- ☐ has been paid
☒ is paid herewith

(Regular patent, 37 C.F.R. § 1.18(a), \$1,370.00—small entity \$665.00;
 Design patent, 37 C.F.R. § 1.18(b), \$480.00—small entity \$240.00;
 Plant patent, 37 C.F.R. § 1.18(c), \$640.00—small entity \$320.00)

Fee \$ 1670.00

6. Petition fee (35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.17(m))

NOTE: The fee for the petition to revive an application unintentionally abandoned is \$1,210. 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.17(m).

Application status is:

- ☐ Small business entity—fee \$665.00
☐ A statement is enclosed.
☐ A statement has been filed.
☒ Other than small entity—fee \$1,320.00

Fee \$ 1370.00

Total issue and petition fee to be paid \$ 3040.00

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7. Payment of total fee:

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 1370.00, 1670.00 (separate check)
☐ Authorization is hereby made to charge the amount of \$ _____
☐ to Deposit Account No. _____
☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

WARNING: Credit card information should not be included on this form as it may become public.

- ☒ Charge any additional fees required by this paper or credit any overpayment in the amount authorized above. to deposit account number 23-0442.

A duplicate of this paper is attached.

8. Showing Required When Petition Being Filed Is More Than 3 Months From Notification of Abandonment or More Than 1 Year After Abandonment

NOTE: The applicant must carry the burden of proof to establish that the "entire" delay, from the due date for the fee and the filing of a grantable petition, was unintentional regardless of the circumstances that originally resulted in the abandonment of the application. M.P.E.P., § 711.03(c), 7th Edition.

(complete the following, if applicable)

- ☐ Because this petition is more than 3 months after the date the Office first notified the applicant that the application is abandoned, applicant additionally submits a showing as to how the delay between the date the applicant was first notified that the application is abandoned and the filing of this petition under 37 C.F.R. § 1.134(b) was unintentional. 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997). See M.P.E.P., § 711.03(c), 7th Edition.
- ☐ Because this petition is more than 1 year after the date of abandonment of the application, applicant additionally submits further information as to when applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997). See M.P.E.P., § 711.03(c), 7th Edition.

9. Terminal Disclaimer

NOTE: 37 CFR 1.37(c) requires that a petition under 37 CFR 1.137(b) be accompanied by a terminal disclaimer (and fee), disclaiming a period equivalent to that period of abandonment, regardless of the period of abandonment, in: (1) a design application; (2) a nonprovisional utility application filed before June, 1995; or (3) a nonprovisional plant application filed before June 8, 1995. Any terminal disclaimer pursuant to § 1.137(c) must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of § 1.137(c) do not apply to lapsed patents.

- A. ☒ This utility/plant application was filed on or after June 8, 1995 and no terminal disclaimer is required.

OR

- B. ☐ This application is:
- ☐ a design application
 - ☐ a nonprovisional utility application filed before June 8, 1995
 - ☐ a nonprovisional plant application filed before June 8, 1995
- and a terminal disclaimer, and the fee therefor, is attached.

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